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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 PUNYA TIPYASOTHI, et al. ,

11 Plaintiff,

12 v.

13 HILDA L. SOLIS, Secretary, Department
14 of Labor,

15 Defendant.

CASE NO. C11-304-RSM

ORDER GRANTING MOTION TO
DISMISS

16 This matter comes before the Court upon Defendant's Motion to Dismiss Under Fed. R.
17 Civ. P. 12(b)(6). Dkt. #5. Defendant's motion was filed on May 2, 2011 and properly noted for
18 consideration on May 27, 2011. Pursuant to Local Rule CR 7(d)(3), Plaintiffs' response to
19 Defendant's motion was due May 23, 2011. Instead of responding to Defendant's motion,
20 Plaintiffs filed a "Motion for Summary Judgment/Response to Motion to Dismiss" (Dkt. #6) on
21 May 27, four days after the response was due. On June 2, 2011, Plaintiffs filed an amended
22 complaint and a motion to modify the court's scheduling order. Dkt. #s 8 & 9.
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1 First, a plaintiff may amend its complaint once as a matter of right within 21 days after
2 serving it or, if it is one to which a responsive pleading is required, 21 days after service of a
3 motion under Rule 12(b), (e) or (f). Fed. R. Civ. P. 15. Plaintiffs' time period for filing an
4 amended complaint without leave of the court expired on May 23, 2011. Therefore, Plaintiffs'
5 June 2, 2011 amended complaint is improper. Plaintiffs' only explanation for their failure to
6 comply with the Federal Rules of Civil Procedure is that "[t]he Amended Complaint only
7 changed by including Exhibit A and B that was first introduced by [Docket] 6." Dkt. #11, p. 2.
8 This is not a justification.

9 Second, with respect to Plaintiffs' decision to respond to Defendant's motion to dismiss
10 four days late by filing a motion for summary judgment, Plaintiffs' only explanation appears to
11 be that, "Defendant's Motion to Dismiss appeared to be mislabeled, and should be a Motion for
12 Summary Judgment, in the alternative, Motion to Dismiss." Dkt. #9, p. 2. However, even if
13 Defendant's motion had been mislabeled, it still would have required a response on May 23,
14 2011. "If a party fails to file papers in opposition to a motion, such failure may be considered
15 by the court as an admission that the motion has merit." Local Rule CR 7(b). Plaintiffs are
16 represented by counsel and have offered the Court no reason or good cause that would justify
17 leniency with respect to the generally applicable rules of this court. Moreover, by failing to
18 follow both the Local Rules and the Federal Rules of Civil Procedure in the short period of time
19 since Defendant filed its Motion to Dismiss, Plaintiffs have provided the Court with no reason to
20 believe, that if given leniency now, they would not choose to similarly flout rules and orders
21 going forward. The Court therefore construes Plaintiffs' failure to timely respond to Defendant's
22 motion to dismiss as an admission that it has merit.

1 Accordingly, having reviewed the relevant pleadings, the declarations and exhibits
2 attached thereto, and the remainder of the record in this case, the Court hereby finds and
3 ORDERS:

4 (1) Plaintiffs' cause of action is hereby DISMISSED without prejudice for failure to state
5 a claim upon which relief may be granted. If Plaintiffs wish to pursue this action,
6 Plaintiffs shall file an amended complaint within thirty days of this order. Failure to
7 file an amended complaint will result in dismissal with prejudice.

8 (2) All pending motions are STRICKEN as moot.

9 (3) The Clerk of the Court is directed to forward a copy of this order to all counsel of
10 record.

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12 Dated July 1, 2011.

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16 RICARDO S. MARTINEZ
17 UNITED STATES DISTRICT JUDGE
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